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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	}	Case No. '13CV1442 BTM WMC
11 Petitioner,		PETITION TO ENFORCE
12 v.		INTERNAL REVENUE SERVICE
13 GRACE MIRANDA,		SUMMONS
14 Respondent.	}	Date: August 30, 2013
		Time: 2:00 p.m.
		Courtroom: 15B
		Hon. Barry Ted Moskowitz

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17 Petitioner, the United States of America, by its counsel, Laura E. Duffy,
18 United States Attorney, and Caroline J. Clark, Assistant United States
19 Attorney, petitions the Court for an order to enforce the Internal Revenue
20 Service (hereinafter "IRS") summons described below and, in support thereof,
21 alleges as follows:

22 1. This proceeding is brought at the request of the Chief Counsel, IRS,
23 a delegate of the Secretary of the Treasury, and at the direction of the
24 Attorney General of the United States.

25 2. Jurisdiction over these proceedings is conferred upon this Court by
26 26 U.S.C. §§ 7402(b) and 7604(a), and 28 U.S.C. § 1345.

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1 3. Venue is proper in the Southern District of California because
2 Respondent, Grace Miranda, is found within this district.

3 4. At all times relevant, J. Greene, who issued the summons to
4 Respondent, was a Revenue Officer with the IRS, employed in the Small
5 Business/Self-Employed Division in San Diego, California, and was
6 authorized to issue the IRS summons pursuant to the authority contained in 26
7 U.S.C. § 7602 and 26 C.F.R. § 301.7602-1. See Declaration of Revenue
8 Officer J. Greene at ¶ 1 (hereinafter “Greene Decl.”).

9 5. Respondent, Grace Miranda, resides at 1402 N. Sixth Street,
10 El Centro, California, which is within the geographical jurisdiction of this
11 Court.

12 6. On December 21, 2012, Revenue Officer Greene issued an IRS
13 summons directing Respondent to appear before him on January 22, 2013, at
14 10:00 a.m. at 880 Front Street, Room 3295, in San Diego, California, to
15 produce for examination the documents and records specified in the summons.
16 Greene Decl. at ¶¶ 2, 3, 5. The summons related to a determination of
17 Respondent’s ability to pay, and find levy sources for, her outstanding civil
18 penalty tax liabilities for various tax quarters in 2007, 2009 and 2010. Id. at 2.
19 On December 21, 2012, Revenue Officer Greene served the summons on
20 Respondent by leaving an attested copy attached to the door at Respondent’s
21 last and usual place of abode. Id. at ¶ 4. A copy of the summons and
22 certificate of service are attached to the Greene Decl. as Exhibits A and B.

23 7. On January 22, 2013, Respondent did not appear before Revenue
24 Officer Greene in response to the summons and did not provide any of the
25 testimony, books, papers, records, and other data sought by the summons. Id.
26 at ¶ 5.

27 8. On February 19, 2013, attorney Mistala M. Cullen of the IRS Office
28 of Division Counsel sent a letter to Respondent providing her with another

1 opportunity to comply with the summons and directing her to appear before
2 Revenue Officer Greene on March 21, 2013, at 10:00 a.m. at 880 Front Street,
3 Room 3295, in San Diego, California. Id. at ¶ 6. A true and correct copy of
4 the letter is attached to the Greene Decl. as Exhibit C.

5 9. On April 16, 2013, the undersigned sent a letter to Respondent
6 advising her that if she wanted to avoid the initiation of enforcement
7 proceedings in federal court she needed to comply with the summons and
8 appear before Revenue Officer Greene on May 14, 2013 at 10:00 a.m. at 880
9 Front Street, Room 3295, in San Diego, California. Id. at ¶ 7. A true and
10 correct copy of the letter is attached to the Greene Decl. as Exhibit D.

11 10. On April 23, 2013, Respondent called Revenue Officer Greene,
12 seeking an extension for complying with the summons. Revenue Officer
13 Greene agreed and allowed her to provide the IRS with the summonsed
14 information by May 23, 2013. Id. at ¶ 8.

15 11. To date, Respondent has not provided the IRS with the documents
16 or information requested in the summons. Id. at 9.

17 12. All administrative steps required by the Internal Revenue Code for
18 the issuance of the summons have been taken. Id. at ¶ 11.

19 13. In order to obtain judicial enforcement of an IRS summons, the
20 United States bears the initial burden of showing “that the investigation will
21 be conducted pursuant to a legitimate purpose, that the inquiry may be
22 relevant to the purpose, that the information sought is not already within the
23 Commissioner’s possession, and that the administrative steps required by the
24 Code have been followed . . . ” United States v. Powell, 379 U.S. 48, 57-58
25 (1964); accord, United States v. Dynavac, 6 F.3d 1407 (9th Cir. 1993). The
26 burden on the government is a “slight one” and may be satisfied by presenting
27 the declaration by the investigating agent. Dynavac, 6 F.3d at 1414 (citations
28 omitted). Once a prima facie case has been made, “a heavy burden falls on

1 the taxpayer” to show an abuse of process or lack of institutional good faith.
2 Id. The taxpayer “must allege specific facts and evidence to support his
3 allegations.” Liberty Financial Services v. United States, 778 F.2d 1390,
4 1392 (9th Cir. 1985) (citation omitted). The matter may be decided on the
5 written record in a summary proceeding. See Hotz v. United States, No.
6 MISC-CV-F-95-32, 1996 WL 159695 at *2 (E.D. Cal. Jan. 9, 1996). To be
7 entitled to an evidentiary hearing, a respondent must make some showing to
8 support a contention of improper purpose or lack of good faith. Fortney v.
9 United States, 59 F.3d 117, 121 (9th Cir. 1995).

10 14. The Internal Revenue Code specifically allows the issuance of a
11 summons for the purpose of “determining the liability of any person for any
12 internal revenue tax . . . or collecting any such liability . . .” 26 U.S.C. §
13 7602(a). Therefore, Revenue Officer Greene’s investigation is being
14 conducted pursuant to a legitimate purpose specifically authorized by statute.

15 15. The testimony, books, papers, records, or other data sought by the
16 summons are not already in the possession of the IRS. Greene Decl. at ¶ 10.

17 16. Respondent is in possession and control of the testimony and
18 documents concerning the above-described investigation.

19 17. The Internal Revenue Code permits the Secretary to summon the
20 records of any person “which may be relevant or material” to the
21 investigation. 26 U.S.C. § 7602(a)(1). It is well settled that to satisfy the
22 relevancy requirement set forth in Powell, the United States must demonstrate
23 that the summoned information may “throw light upon” the subject of the
24 investigation. United States v. Arthur Young & Co., 465 U.S. 805, 813-14, n.
25 11 (1984). This standard necessarily presents a low threshold because of the
26 inherent difficulties in ascertaining, prior to examination, how much use the
27 summoned records will be in determining the collectability of a person’s tax
28 liability and whether a person has an income tax liability for a specific period.

1 The Supreme Court has observed that:

2 [a]s the language of § 7602 clearly indicates, an IRS summons
3 is not to be judged by the relevance standards used in deciding
4 whether to admit evidence in federal court. The language “may
5 be” reflects Congress’ express intention to allow the IRS to
6 obtain items of even potential relevance to an ongoing
investigation, without reference to its admissibility. The
purpose of Congress is obvious: the Service can hardly be
expected to know whether such data will in fact be relevant
until it is procured and scrutinized.

7 Arthur Young & Co., 465 U.S. at 814 (internal citation omitted) (emphasis in
8 original). This low threshold of relevance also follows from the language of
9 the Code, which authorizes the investigation of persons who “may be liable”
10 for taxes. 26 U.S.C. § 7601.

11 18. Under the instant circumstances, it is clear that the summoned
12 material is relevant. The purpose of Revenue Officer Greene’s investigation
13 is to determine Respondent’s ability to pay, and find levy sources for, her
14 outstanding tax liabilities for tax quarters in 2007, 2009 and 2010. Greene
15 Decl. at ¶ 2. The summons seeks information regarding the Respondent’s
16 assets and liabilities, including, among other things, “. . . all bank statements,
17 checkbooks, canceled checks, savings account passbooks, records, or
18 certificates of deposit . . .” Id. at Exhibit A. The documents sought by this
19 summons are clearly relevant to the determination of Respondent’s ability to
20 pay, and find levy sources for, her outstanding civil tax liabilities. Id. at ¶ 12.

21 19. There is no Department of Justice referral in effect with respect to
22 Respondent. Id. at ¶ 13.

23 WHEREFORE, the United States requests that:

24 1. The Court enter an order directing the Respondent, Grace Miranda,
25 to show cause, if any, why she should not comply with and obey the above-
26 described summons (Greene Decl. at Exhibit A) served on her on December
27 21, 2012, and each and every requirement thereof, by ordering the attendance,
28 testimony, and production of the books, papers, records, and other data

1 required and called for by the terms of the summons before Revenue Officer
2 Greene, or any other proper officer or employee of the IRS at such time and
3 place as may be fixed by Revenue Officer Greene or any other proper officer
4 or employee of the IRS.

5 2. That the United States recover the costs and expenses incurred in
6 maintaining this action against Respondent.

7 3. That the Court grant such other and further relief as may be required.

8
9 DATED: June 20, 2013

Respectfully submitted,

10 LAURA E. DUFFY
United States Attorney

11 s/ Caroline J. Clark

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13 Assistant United States Attorney
Attorneys for Petitioner
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